

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 3, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 48, 2/25/1999; HB 116,
2/25/1999; HB 214, 2/25/1999
Executive Action: HB 48; HB 214; HB 233

HEARING ON HB 116

Sponsor: REP. DAN MCGEE, HD 21, Laurel

Proponents:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls
Mike Ferriter, Community Corrections

Mike Ruppert, Boyd Andrew Chemical Dependency Center in Helena
Candace Payne, Rimrock Foundation
Charles Brookes, State DUI Task Force
Mona Jamison, MT Addiction Service Providers

Opponents: None

Opening Statement by Sponsor:

REP. DAN MCGEE, HD 21, Laurel, said in current law the court may not defer sentences in a fourth time DUI. This bill allows the court to consider the alternative of a state approved public or private treatment facility that provides the appropriate level of chemical dependency treatment. He said on page 3 they struck language pertaining to suspending the sentence by the court. But there was some problems with that as the district court would have to pay for the treatment. However, with the language on page 2, the payment for treatment would be under the Department of Corrections budget. He said there are different types of treatment facilities and this language allows a broad range of facilities that can be used. This is not getting soft on crime, the hardest thing anyone might have to do is deal with their chemical dependency. If someone has been sentenced to prison for a fourth time DUI, they really don't have to deal with their problem and they are likely to re-offend once they have served their sentence.

Proponents' Testimony:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, rose in support of **HB 116.**

Mike Ferriter, Community Corrections, said this bill allows one additional place to incarcerate fourth time DUI offenders. This bill provides the Department of Corrections the authority necessary to ensure that the treatment facility not only meets the needs of the offender, but considers the safety of the public. The Department has not yet resolved the issue of trying to finance the placement of the offender if they don't have the ability to pay. Potential solutions include utilizing limited pre-release funds or funds used for outpatient treatment by probation and parole status offenders.

Mike Ruppert, Boyd Andrew Chemical Dependency Center in Helena, said there was some original concern that this bill may take away from punishment and put too much on rehabilitation. But the bottom line is they could punish offenders for any period of time and will still re-offend unless they get some treatment.

Candace Payne, Rimrock Foundation, said their organization can provide a broad range of treatment services to the fourth time DUI offenders, including inpatient, intensive outpatient, and long term after care.

Charles Brookes, State DUI Task Force, said treatment is one of the key elements for alcohol and drug abuse. He said they like the component in the bill that if offenders are able to pay they should pay for the treatment themselves.

Mona Jamison, MT Addiction Service Providers, said on page 2 it allows the court to specify sentencing to a treatment facility that is approved by the state.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. SUE BARTLETT asked where the requirement for the offender to pay for the treatment is in the bill. **Mike Ferriter** said page 2, line 6 (c).

SEN. BARTLETT said is this under 61-8-731, a different section of law, and perhaps they need an amendment to make this clear. She said on page 2, line 20, subsection 4(a) talks about initial placement of a defendant in a pre-release center or boot camp. Is this only limited to a boot camp and a pre-release center and should the treatment be defined. **Mike Ferriter** said the bill requires six to thirteen months of imprisonment. The boot camp program is four months and in order to satisfy the sentence of six months the defendant would need to go to a pre-release center, etc. The Department has to insure that the minimum sentence is carried out.

SEN. DUANE GRIMES said this would be an acceptable alternative if judges don't start creating another cost impact because they assign probation less and treatment centers more. It appears on the surface that costs would go down because there would be less incarceration, but the technical notes don't show that. **REP.**

MCGEE said page 3, line 5, the offender has to pay if he is financially able. But there are a lot of people that are not financially able. Fourth time DUIs don't go to probation, they go to pre-release centers or the Montana State Prison. Fourth time DUIs are treated as felony offenders and do not go straight to probation. This means that dollars are being spent on them right now. The cost to go through a treatment facility is not a whole lot more than it is to go to a pre-release center. The total fiscal impact initially may be higher, but in the long run it will be less as they spend less time on fourth time DUIs.

SEN. GRIMES asked if they had thought about doing this for second or third time DUI's and what is the cost impact of this bill.

Mike Ferriter said as far as cost they have not requested a budget appropriation for this project. They would like to explore it and utilize pre-release funds. Pre-release programs cost around \$40 per day. The cost of this program will be more as there is treatment involved rather than the traditional correctional setting. This is one option of six that may work. He said the Department of Corrections only gets involved in fourth time DUIs. It is the felony offender by law that is required to do six months of imprisonment. They don't handle 1-3 DUI offenders at the felony level. Probation is not an option for 4th time DUI offenders.

SEN. BARTLETT said she would like to see the number of offenders committed to the correctional system for fourth time DUI's. **Mike Ferriter** said he could get more detailed information but on January, 27, 1999 there were 49 offenders at the Montana State Prison serving time for fourth time DUI.

Closing by Sponsor:

REP. MCGEE said this is an option available to the court. The court does not have to choose this option and would not be appropriate for someone who has committed another crime.

{Tape : 1; Side : A; Approx. Time Counter : 9:33 a.m.}

HEARING ON HB 214

Sponsor: REP. DAN MCGEE, HD 21, Laurel

Proponents:

Virginia Mueller, Mueller Consulting
Larry Marshall, MT Associates Inc.
Frank Ritchie, Ritchie Land Surveying
Stephen Ries, Ries Surveying

Opponents: None

Opening Statement by Sponsor:

REP. DAN MCGEE, HD 21, Laurel, read the title of the bill. He also read lines 12-15. He said if he is hired to stake out the base of the Capitol Building so it can be constructed, this building is an improvement to the land. It is not always understood that if he stakes the corner boundaries of the

property it is also an improvement to the land. He said on line 28, they are defining what land surveying means. He passed out a definition for land surveying that is in the statutes.

EXHIBIT (jus48a01) He said when they set property corners it is an improvement to the land.

Proponents' Testimony:

Virginia Mueller, Mueller Consulting, said the placement of a ten year limitation of the liability of a land surveyor for the improvements to the property is a positive step. Discovery of any serious errors would probably be made prior to the ten year limit. Without this limitation a surveyor is forced to maintain very expensive liability insurance for a lifetime.

Larry Marshall, MT Associates Inc. of Land Surveyors, said he would like to limit his liability especially when he retires. The cost for liability insurance runs from \$2000 - \$10,000 plus the expense of the deductible.

{Tape : 1; Side : A; Approx. Time Counter : 9:40 a.m.}

Frank Ritchie, Ritchie Land Surveying, rose in support of **HB 214**.
EXHIBIT (jus48a02)

Stephen Ries, Ries Surveying, said even after surveyors have passed away they try to get compensation for errors.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. MCGEE said current law states that land surveying falls under the statute of limitations. But what is not clear is if the setting of a property corner is an improvement to the ground.

{Tape : 1; Side : A; Approx. Time Counter : 9:45 a.m.}

HEARING ON HB 48

Sponsor: REP. DAN MCGEE, HD 21, Laurel

Proponents:

Luke Faust, Attorney

John Conner, Attorney General's Office, and MT County Attorney Assoc.

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls

Opponents: None

Opening Statement by Sponsor:

REP. DAN MCGEE, HD 21, Laurel, said Title 45 and 46 need a lot of work. They worked on Title 46, chapter 18 that had some very confusing statutes. There are no changes or anything that is new in this bill it is simply a rewrite. **EXHIBIT(jus48a03)**

Proponents' Testimony:

Luke Foust, Attorney, said he has reviewed Title 46 and has tried to clarify the statute and the changes are technical in nature. He said what a district court judge can do upon sentencing is one of three things. He may defer imposition of sentencing, suspend sentencing or impose a particular sentence. People should be able to read this bill and understand it. He said as a public offender he deals with Title 46 everyday.

John Conner, Attorney General's Office, and MT County Attorney Assoc., said where there are deleted portions in this bill they are somewhere else in the statute to read better, etc. He said one example is they made a whole new section out of the mandatory minimums so they are easier to find.

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, supported **HB 48.**

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN asked on page 5, line 19-25 where did this section go? **Luke Foust** said it went to page 3, line 27-29 to make it more clear.

Closing by Sponsor:

REP. MCGEE said there is a lot more cleaning up to do with these statutes.

{Tape : 1; Side : B; Approx. Time Counter : 9:58 a.m.}

EXECUTIVE ACTION ON HB 48

Motion/Vote: SEN. MCNUTT moved HB 48 BE CONCURRED IN. Motion carried unanimously 8-0.

EXECUTIVE ACTION ON HB 214

Motion/Vote: SEN. JABS moved HB 214 BE CONCURRED IN. Motion carried unanimously 8-0.

EXECUTIVE ACTION ON HB 233

Discussion:

SEN. DOHERTY said he doesn't like this bill and the notion of assigning a judicial action to a private collections agency. He said he understands the problems with overworked police officers, but he doesn't understand why this has to be assigned to a private entity when it is a judicial function.

CHAIRMAN GROSFIELD said almost every other state does this.

SEN. JABS said Billings was doing this for awhile and were very successful until they found out they were not in compliance with the law.

SEN. BARTLETT asked if these were civil or criminal fines. CHAIRMAN GROSFIELD said they concern both.

SEN. HALLIGAN said if people have a six month time frame to pay and the court doesn't receive any payment in three months the court clerks will send a letter and try to get people to pay. He said in 30 percent of the cases there are people that just can't pay, so they do community service, etc. This bill will be used when people don't come in to pay the fines, etc. to try to collect. There is no additional fees here and other states do use this.

Motion: SEN. JABS moved HB 233 BE CONCURRED IN.

Discussion:

SEN. DOHERTY said he is concerned about delegating a judicial function to a private corporation.

SEN. GRIMES asked if this is an addition to the fines. CHAIRMAN GROSFIELD said line 19-20 clarifies that and there is no additional charge.

SEN. MCNUTT said it is illegal to add a fee to collect these.

SEN. DOHERTY said the individual will have the criminal fine on their record. If they don't pay then, they will have a judgement assigned to them by a private corporation. He said they may get into a situation where they have a double punishment for one crime.

CHAIRMAN GROSFIELD said they are not likely to ever go after an additional judgement, they will use the original judgement.

SEN. HALLIGAN said they have eight years to sue on a contract and they can renew the existing judgement. This gives them more time to pursue that judgement.

Vote: Motion **carried 8-1 with Doherty voting no.**

ADJOURNMENT

Adjournment: 10:13 A.M.

SEN. LORENTS GROSFIELD, Chairman

JODI PAULEY, Secretary

LG/JP

EXHIBIT (jus48aad)